



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CT1499MV2OF2 1

EFFECTIVE BEGIN DATE: 09-01-2006  
EXPIRATION DATE: 08-31-2007  
PAGE: 1 of 4

BUYER : JEANETTE CHUPP  
Jeanette.Chupp@iowa.gov  
515-281-6288

FOB FOB Dest, Freight Prepaid

PAYMENT TERMS (%): DAYS:

**VENDOR:**

United Collection Bureau  
4100 Horizona Dr Ste 101

Columbus, OH 43220  
USA

**VENDOR CONTACT:**

JEFF HORNER  
PHONE: 614-732-5005 EXT:  
EMAIL: jwhorner@ucbinc.com  
VENDOR #: 34447978900

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**DESCRIPTION OF ITEMS CONTRACTED**

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Collection of delinquent debt per RFP70500S085 of 6/20/2005.

Contract to provide delinquent debt collection services per the terms and conditions of RFP70500S085 of June 20, 2005. The term of this contract shall be for twelve (12) months. If United Collection Bureau, Inc., performs satisfactorily, the contract may be renewed at the sole discretion of the Iowa Dept. of Revenue for a maximum of four (4) consecutive, additional periods of twelve (12) months each. All extensions shall be completed in writing, not later than sixty (60) days prior to contract expiration.

Iowa Dept. of Revenue, Contract Administrator: Wayne Cooper, 401 S.W. 7th Street, Suite C., Des Moines, IA 50311. Phone 515-725-0229 or e-mail: wayne.cooper@idrf.state.ia.us

United Collection Bureau Contract Administrator: Jeff Horner, phone: 614-732-5005 or e-mail: jwhorner@ucbinc.com

Enclosure: RFP70500S085 Terms and Conditions.

**RENEWAL PERIODS**

FROM 09-01-2007 TO 08-31-2008  
FROM 09-01-2008 TO 08-31-2009  
FROM 09-01-2009 TO 08-31-2010  
FROM 09-01-2010 TO 08-31-2011

**THRESHOLDS**

MINIMUM ORDER AMOUNT:  
MAXIMUM ORDER AMOUNT:  
NOT TO EXCEED AMOUNT:

**AUTHORIZED DEPARTMENT**

ALL

**TOTAL \$0.00**

VENDOR: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_

THIS MA IS SUBJECT TO THE TERMS AND  
CONDITIONS ATTACHED HERETO.  
PLEASE SEE ATTACHMENTS FOR  
FURTHER DESCRIPTIONS.



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LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		91806	\$0.000000
			Administrative Consulting	\$0.000000
			.	
2	0.00000	MO	94633	\$0.000000
			Collection Services, Financial Debt	\$0.000000
			.	
			United Collection Bureau, Inc. shall be compensated by applying a collection fee to the monthly collections deposited with the Iowa Dept. of Revenue: Seven (7) percent, per dollar of gross dollars recovered.	
			.	



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## **TERMS AND CONDITIONS**

### **Incorporation**

The Request for Proposal and/or bid documents for this project and the vendor's proposal in response to the RFP or Bid together with any clarifications, attachments, appendices, or amendments of the State or the Vendor are incorporated into this Contract by reference as if fully set forth in this Contract.

### **Remedies upon Default**

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

### **Force Majeure**

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

### **Subcontractors**

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

### **Termination-Non-Appropriation**

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

### **Immunity of State/Fed Agencies**

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

### **Assignment**

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

### **Anti-Trust Assignment**

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

### **Delivery and Acceptance**

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.

B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.

C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

### **Delivery and Acceptance (cont)**

D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.

E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

### **Title to Goods**

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

### **Indemnification**

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

### **Nondiscrimination**

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

### **Warranty**

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

### **Taxes**



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The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

**Hazardous Material**

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

**Public Records**

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

**Miscellaneous**

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

**Records Retention**

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

**Independent Contractor**

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

**Performance Monitoring**

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

**RFP#: 70500S085**

**REQUEST FOR PROPOSAL**

**DELINQUENT DEBT COLLECTION SERVICES  
FOR  
THE STATE OF IOWA**

**Submitted By:**

**United Collection Bureau, Inc.**

**4100 Horizons Drive, Suite 101**

**Columbus, Ohio 43220**

**Jeff Horner**

**614-732-5005**

**Submitted June 20, 2005**

**"ORIGINAL COLLECTION FEE PROPOSAL"**

**REQUEST FOR PROPOSAL NO. 70500S085**  
**ATTACHMENT 1**  
**COLLECTION FEE PROPOSAL**

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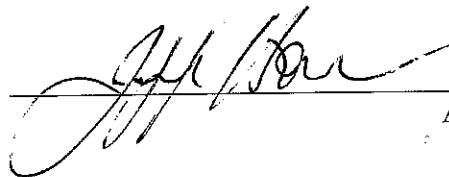
**Collection Fee:**

In consideration for the debt collection services to be provided pursuant to this RFP, no charges shall be incurred by the IDR. The IDR shall pay no expenses incurred by the Collection Agency for the collection process. The Collection Agency shall be compensated by applying a collection fee to the monthly collections deposited with the IDR.

The Collection Agency shall indicate the percentage collection fee to be applied to the gross dollars collected on a monthly basis.

7% percent (%), per dollar of gross dollars recovered

I certify the fee(s) and information provided in this proposal have been determined independently without consultation, communications, or agreement with any other Collection Agency(s) or competitor for the purpose of restricting competition.



Authorized Signature

**United Collection Bureau, Inc.**

Company (Collection Agency) Name

**4100 Horizons Drive, Suite 101**

Address

**Columbus, Ohio 43220**

City, State, Zip Code

**614-732-5005**

Phone Number

**REQUEST FOR PROPOSAL NO. 70500S085**  
**CHAPTER 2**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**CONTRACT FOR THE COLLECTION OF**  
**DELINQUENT DEBT DUE FROM DEBTORS**

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**2.1 PARTIES**

This contract is between Michael Ralston, acting in his official capacity as the Director of the Iowa Department of Revenue ("IDR"), and  
United Collection Bureau, Inc.  
located at 4100 Horizons Drive, Suite 101, Columbus, Ohio, 43220  
hereinafter referred as the "Collection Agency".

**2.2 DEFINITIONS**

These contract terms and conditions relate to Request for Proposal (RFP) number 70500S085 for the services identified in the RFP. As used herein the following terms are defined as follows:

- A. Collection Agency  
The contracting Collection Agency, be it an individual, group of individuals, law firm or professional debt collection agency.
- B. Contract Administrator (CA)  
The primary point of contact for the IDR and the liaison between the IDR, other executive branch Agencies or branches of State government, and the Collection Agency.

The Contract Administrator will be:

Wayne Cooper  
Iowa Department of Revenue  
401 S.W. 7<sup>th</sup> Street Suite C  
Des Moines IA 50311  
Phone: 515-725-0229  
E-Mail: Wayne.Cooper@idrf.state.ia.us

- C. Delinquent Tax  
A tax liability including applicable penalties, interest and fees due and owing to the State of Iowa for which at least one (1) notice requesting payment has been transmitted to the taxpayer from the IDR.

- D. Debt  
Any charge, fees, loans or other indebtedness owed to the State or court or subject to collection pursuant to the provisions of Section 421.17 (22), Code of Iowa.
- E. Department  
The State of Iowa, Iowa Department of Revenue ("IDR").
- G. Director  
The Director of the Iowa Department of Revenue, or the Director's designee.
- H. Fees  
All assessable and collectable fees, costs, court costs and other costs incurred by the IDR and the State in the assessment, collection and supervision of taxpayer accounts, including but not limited to certified mail costs and lien filing fees.
- I. Fiscal Year (FY)  
A period of time beginning July 1 one year, and ending on June 30<sup>th</sup> of the following year. Example: Fiscal Year 2004 shall be "FY2004" or July 1, 2003 thru June 30, 2004.

## 2.3 AUTHORITY

This contract is entered into pursuant to the provisions of Section 421.17(22), Code of Iowa. The Department will provide to the Collection Agency the names and last known addresses of debtors and will request the Collection Agency to collect delinquent amounts owed by such debtors.

The following documents containing specifications for services requested under the RFP are listed below:

- A. This Contract, together with any exhibits, attachments, addenda or project plans attached hereto and incorporated by reference as if set forth fully herein.
- B. The Collection Agency's Fee Proposal, attached hereto and incorporated herein by reference.
- C. The Request for Proposal No. 70500S085, including any and all addenda, exhibits and appendices, and the Collection Agency's response to this Request for Proposal, incorporated herein by reference as if set forth fully in this Contract.



## **2.4 FEE PROPOSAL**

Upon the signing of this contract, the Collection Agency shall provide a collection service to the IDR in the form of actually collecting accounts placed with the Collection Agency from appropriate debtors. For this service the Collection Agency shall receive a fee based upon a percentage of moneys collected on the said accounts according to the Collection Agency's Fee Proposal.

- A. The Collection Agency's proposal as agreed between the State and the Collection Agency, including the proposed fee, is hereby accepted and the Collection Agency's performance shall conform to such proposal. All of the vendor's exceptions to the RFP are hereby denied and shall be considered inapplicable to this Agreement except those fully described below.
- B. Once an account has been referred to the Collection Agency, the IDR agrees there shall be no further dunning (sending billing notices) of the account by the IDR. The Collection Agency shall be the sole collector upon the account and shall be authorized to use all lawful means of collection, but shall not initiate litigation. The Collection Agency shall not encourage settlement offers or requests in amounts less than the full amount balance including any penalty, interest or other charge that has accrued since the account was placed with the Collection Agency. However, if the Collection Agency receives a settlement offer from a debtor the Collection Agency shall refer the offer to the IDR.
- C. The Collection Agency shall be entitled to its full commission, whether amounts are paid directly to the IDR or the Collection Agency. This includes payments received as a result of vehicle blocks. The Director recognizes the urgency of reporting direct payments and agrees to make every effort to make such information available to the Collection Agency. The IDR shall advise the Collection Agency of any direct payments it identifies so the Collection Agency can include the amount on its monthly invoice. The Collection Agency shall not add any additional collection fee to the account but shall collect only the amount designated by the IDR.
- D. In the event the IDR offsets a refund or vendor payment against the amount owed on an account certified and assigned to the Collection Agency, the IDR shall notify the Collection Agency of the amount of the offset. The Collection Agency shall not be entitled to a fee on the offset amount.

## **2.5 RECALCULATING OF FEE**

In cases where an account has been certified and assigned to the Collection Agency upon an estimated amount and the Director later adjusts the amount of the account to a more correct amount, the fee generated by the Collection Agency for services rendered shall be calculated on the correct amount and not on the estimated amount.

## **2.6 ACCOUNTS IN BANKRUPTCY**

In any case where an account has been certified and assigned to the Collection Agency and that account becomes the subject of bankruptcy reorganization, State insolvency, receivership, probate and other proceeding, the Collection Agency shall immediately, on discovery, refer the account back to the Director, and no additional fee shall be generated on the remaining balance.

## **2.7 REMITTANCE OF COLLECTIONS**

The Collection Agency will be authorized to endorse remittances made payable to the IDR if received by the Collection Agency. The Collection Agency agrees that all funds collected shall be remitted to the IDR within ten (10) days following the last day of the month in which the funds were collected from a debtor. The forms to be used for such remittances shall be prescribed by the IDR. Adjustments for returned checks, errors, or other adjustments shall be shown in the next monthly remittance to the IDR.

## **2.8 INVOICES**

- A. The Collection Agency shall submit invoices for payment to the Contract Administrator by the 10<sup>th</sup> of each month accompanied by a check payable to Treasurer State of Iowa for the full amount of remitted collections made during the prior month. The invoices shall be in the format prescribed by the Department (IDR).
- B. The Collection Agency shall identify services rendered and submit itemized invoices for amounts owed on a monthly basis. IDR will pay all approved invoices in arrears and in conformance with Iowa Code Section 421.40 and 701 IAC 201.1(2). IDR may vary the terms of this provision by paying the invoice in less than 60 days as provided in Iowa Code Section 421.40. However, an election to pay in less than 60 days shall not act as an implied waiver of Iowa Code Section 421.40. Any sums owed to IDR by the Collection Agency shall be itemized and deducted from the Collection Agency's invoice prior to submission. If the IDR disputes the amount of any invoice, the IDR will notify the Collection Agency of the dispute within 30 days of receipt of the invoice. IDR may withhold payment of the disputed amount until the dispute is resolved.
- C. In the event that the Collection Agency owes IDR or the State of Iowa any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any law; IDR may set off the sum owed to IDR or the State against any sum billed to IDR by the Collection Agency in IDR's sole discretion unless otherwise required by law. The Collection Agency agrees that this provision constitutes proper and timely notice under the law of setoff.
- D. The Collection Agency shall audit the invoices presented to the IDR and payments received from the IDR to ensure that they are proper, current and correct. The Collection Agency has 30 days from the date of invoice or payment to present and

resolve any discrepancies with the IDR. The Collection Agency shall notify the IDR of any and all discrepancies that the audit(s) reveals.

- E. The Collection Agency may request that payment be made by the IDR using electronic funds transfer.

## **2.9 BONDS AND INSURANCE**

Pursuant to normally accepted business practices, the Collection Agency agrees to maintain a \$100,000.00 Fidelity Bond and an Errors and Omissions Insurance Policy in the amount of at least \$500,000.00. Evidence of insurance shall be furnished at Contract signing and upon request. Additionally, the Collection Agency shall maintain adequate business insurance to include an umbrella liability policy of at least \$250,000.00 per occurrence or \$500,000.00 total. The Fidelity Bond shall be issued in the name of the State of Iowa and the company which issues any bond on insurance required by this contract must be registered with the State of Iowa, Department of Commerce, Insurance Division to do business within the State of Iowa.

## **2.10 COMPLIANCE WITH IOWA LAWS**

The Collection Agency agrees it shall be doing business in the State of Iowa from the moment of execution of the Contract for the purposes of the Iowa income tax and business and corporation privilege tax laws. The Collection Agency agrees it shall be required to follow the provisions of the Code of Iowa, and any relevant federal statutes and regulations concerning confidentiality of Iowa and federal tax information.

## **2.11 TERMINATION**

- A. Termination for cause: The IDR may terminate the contract resulting from Request for Proposal No. 70500S085 at any time the Collection Agency fails to carry out the requirements of the RFP, breaches any material term of the Contract, or fails to make substantial progress under the terms specified in RFP and the resulting Contract.
  - 1. The Department (IDR) shall provide the Collection Agency with thirty (30) days notice of conditions justifying termination for cause. If after such notice the Collection Agency fails to remedy the conditions contained in the notice, the Department (IDR) shall issue the Collection Agency an order to stop work immediately and deliver all work and work in progress to the Department. No fees shall be paid to the Collection Agency for collections made after this date.
  - 2. The Department shall be obligated only for those services rendered prior to the day of notice of termination, less any liquidated damages assessed against the Collection Agency that may be assessed for nonperformance.
- B. With the mutual agreement of both parties upon receipt and acceptance of not less than thirty (30) days written notice, the Contract may be terminated on an agreed date prior to the expiration of the Contract without penalty to either party. All Collection Agency data

and contact information on accounts will be returned to IDR by the termination date. The mutual agreement must specify when fees for any further collections will terminate.

- C. Notwithstanding any of the provision of the is contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the Federal Government or of the State of Iowa to appropriate funds or discontinuance or material alteration of the program under which funds were provided, then the IDR or the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding. Unless otherwise agreed, the contract shall become null and void on the last day of the fiscal year for which appropriations were received; except that if an appropriation to cover the costs of this contract becomes available within sixty (60) days subsequent to termination under this clause, the IDR or the State agrees to renew the contract with the terminated contractor under the same provisions, terms, and conditions as were present in the original contract.

## **2.12 DISPUTES**

Jurisdiction over disputes involving this contract shall only be brought in the courts of the State of Iowa and shall be tried in either Polk County, Iowa District Court or the United States District Court for the Southern District of Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as a waiver of sovereign immunity.

## **2.13 EQUAL EMPLOYMENT OPPORTUNITIES**

The Collection Agency, its employees, agents, and subcontractors shall comply with federal, state, and local law and regulations to insure that no employee or applicant for employment is discriminated against because of race, religion, color, sex or national origin. The Collection Agency shall have an Affirmative Action plan on file, and shall provide it upon request. A breach of this provision shall be regarded as a material breach of the contract.

## **2.14 AUDIT OR EXAMINATION OF RECORDS**

- A. The Collection Agency agrees the Auditor of the State of Iowa or any authorized representative of the State shall have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, paper and records, including electronic records, of the Collection Agency relating to orders, invoices or payments of this contract except those records which are recognized as confidential under Iowa law.
- B. All records relating to this contract shall be retained for ten (10) years following the date of final payment or completion of any required audit, whichever is earlier. The Collection Agency is not required to retain any records or information provided by the IDR. The Collection Agency should retain records reflecting collection activity such as, but not limited to, the debtors name, account number, date of payment, amount of payment and date the payment was remitted to the IDR.

- C. Compliance with this clause does not relieve the Collection Agency from retaining any records required by other laws or regulation of federal, state or local governmental units.

## **2.15 WARRANTY AGAINST CONTINGENT FEES**

The Collection Agency may not employ a third party to solicit and secure this contract. For breach or violation of this stipulation, the IDR shall have the right to award this contract to the next highest bidder or, in the discretion of the IDR, to award the contract to the Collection Agency, but may deduct from the contract price or to otherwise recover, the full amount of such commission, percentage, brokerage or contingency paid to any third party used to solicit this contract

## **2.16 SUBCONTRACTS**

- A. The State shall approve or disapprove all subcontracts entered into by the Collection Agency for the purpose of completing the provisions of this contract. All such subcontractors shall be required to abide by this contract, meet the minimum qualifications of this contract, and agree to comply with and be subject to confidential requirements and penalties of Iowa law.
- B. All records relating to any subcontract shall be available for audit or examination as stipulated in Section 2.14, "Audit or Examination of Records".
- C. All subcontractors must be similarly bonded as stipulated in Section 2.9, "Bonds and Insurance".

## **2.17 CHANGES**

Changes in contractual provisions or services to be furnished under the contract may be made only in writing and must be approved mutually by an agent of the Collection Agency and the Contract Administrator (CA).

## **2.18 IMMUNITY FROM LIABILITY**

Every party to this Contract is hereby notified and agrees that the State of Iowa, and the Department (IDR) are immune from liability and suit arising from the Collection Agency's performance of the contract and the Collection Agency's activities involving subcontractors and all third parties arising from this contract.

## **2.19 TAXES - STATE AND LOCAL**

The Department (IDR) is exempt from federal excise taxes, and no payment shall be made for any taxes levied on the Collection Agency's employee's wages. The State is exempt from state and local sales and use taxes on the services supplied pursuant to this contract.

## **2.20 SECURITY OF DATA**

Data files sent between the Collection Agency and Department (IDR) may contain confidential information. The Collection Agency's employee's shall be allowed access to these files only as needed for their duties related to the contract and in accordance with the rules established by the custodian of the records. The Collection Agency shall maintain positive policies and procedures for safeguarding the confidentiality of such data, and may be liable civilly or criminally under privacy legislation for negligent release of such information.

## **2.21 COLLECTION AGENCY PERSONNEL**

The Department (IDR) may request replacement of any Collection Agency personnel believed unable to carry out the responsibilities of this contract. Such replacement or approval shall in no way lessen the Collection Agency's responsibility for the proper selection, assignment, management, and discipline of the Collection Agency's employees.

## **2.22 CONFLICTS BETWEEN TERMS**

The Department (IDR) reserves the right to accept or reject any exception taken by the Collection Agency to the terms and conditions of RFP70500S085.

## **2.23 THE RESULTING CONTRACT**

The Contract between the State of Iowa and the Collection Agency shall be a combination of the specifications, terms, and conditions of RFP 70500S085, the Collection Agency's proposal response package and any written clarification or changes made in accordance with the provisions herein.

## **2.24 ORDER OF PREFERENCE**

In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the bid proposal, any inconsistency or conflict shall be resolved as follows:

- A. First by giving preference to the specific provisions of the Contract.
- B. Second, by giving preference to the specific provisions of the RFP.
- C. Third, by giving preference to the specific provisions of the Collection Agency's bid proposal.

## **2.25 WAIVER OF INFORMALITIES**

The State of Iowa and the IDR reserve the right to waive minor deficiencies and informalities, if in the sole judgment of the State and IDR, the best interest of the State and IDR shall be served.

## **2.26 TERM OF CONTRACT**

The initial term of this Contract shall be for twelve (12) months after the date contracts are signed (see below). If the Collection Agency performs satisfactorily, the contract may be renewed at the sole discretion of the IDR, for a maximum of five (5) consecutive, additional periods of twelve (12) months each. All extensions shall be completed in writing, not later than sixty (60) days prior to contract expiration.

## **2.27 TRANSITION**

If the Collection Agency awarded a contract as a result of RFP70500S085 is not the successful Collection Agency of the next subsequent RFP process, or if the contract is not extended, the IDR shall stop placing accounts with the Collection Agency at the contract termination date. Upon written request from the Collection Agency, accounts which have already been placed with the Collection Agency may be retained and collection action pursued by the Collection Agency for a period not to exceed sixty (60) days after the contract termination date.

At the expiration of the contract or the sixty (60) day transition period (if granted) any accounts still in the possession of the Collection Agency shall be returned to the IDR and no further fees shall be paid to the Collection Agency. The Collection Agency shall provide to the IDR information regarding the debtor's current address and employment. In the event of ongoing activity on an account such as a payment plan, the Collection Agency may request additional fees for future payments in accordance with the invoice procedures in this Contract. The decision on whether fees on future fees shall be paid due to continuing payment plan remittances rests within the sole discretion of the Contract Administrator.

## **2.28 INDEMNIFICATION**

The Collection Agency agrees to defend, indemnify and hold the Iowa Department of Revenue and the State of Iowa, as well as employees, agents, board members, appointed officials and elected officials of the same ("Indemnities"), harmless from any and all demands, debts liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, including the reasonable value of time expended by the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the Indemnities related to or arising from:

- A. Any violation or breach of this Contract including without limitation any of the Collection Agency's representations or warranties; or
- B. Any acts or omissions, including ,without limitation, negligent acts or omissions or willful misconduct of the Collection Agency, its officers, employees, agents, board members, contractors, subcontractors, or counsel employed by the Collection Agency in the performance of this Contract, or any other reason in connection with the goods and services provided under this Contract; or

- C. Claims for any violation of any intellectual property right including but not limited to infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the any of the goods or service performed in accordance with this Contract; or
- D. The Collection Agency's performance or attempted performance of this Contract; or
- E. Any failure by the Collection Agency to comply with all local, State and Federal laws and regulations; or
- F. Any failure by the Collection Agency to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Collection Agency to conduct business in the State of Iowa.

The Collection Agency's duty to indemnify as set forth in this Section shall survive the expiration or termination of this Contract and shall apply to all acts taken in the performance of this Contract regardless of the date any potential claim is made or discovered by the Indemnities.

## **2.29 LIQUIDATED DAMAGES**

- A. Time limits for the Collection Agency to perform specified services shall be established so that the IDR shall receive prompt and efficient response in accordance with the scope of work. If any remittance, report or service specified in the scope of work is not completed within the time limits specified in the contract, the delay will interfere with the proper fulfillment of the IDR's statutory responsibilities. Fixing actual damages sustained by the IDR may be impractical or extremely difficult. Therefore, the Collection Agency and the IDR agree the Collection Agency shall pay as liquidated damages, and not as a penalty, the sum of \$100 per day for each day's delay beyond that scheduled date of delivery of any remittance, reports or services. The parties agree that liquidated damages as specified in this Contract are reasonable and will remain reasonable as long as the Contract is in force. (Example: If the monthly report of activity and remittance for prior months collections are due by the 10<sup>th</sup> of the month but are not received until the 15<sup>th</sup>, the damages will be \$500 for the late report and \$500 for the late remittance.)
- B. Amounts due to the IDR as liquidated damages may be deducted by the IDR from any money payable to the Collection Agency pursuant to this contract. The IDR shall notify the Collection Agency in writing of any claim for liquidated damages on or before the date the IDR deducts such sums from money payable to the Collection Agency.
- C. It is expressly agreed that the express waiver of any liquidated damages due to the IDR shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the IDR.



- D. Assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the IDR. Except and to the extent expressly provided herein, the IDR shall be entitled to recover liquidated damages under each Section applicable to any given incident.
- E. The Collection Agency shall not be required to pay liquidated damages for delays solely caused by factors enumerated in the Section entitled Force Majeure or for time delays specifically approved by the IDR.

## 2.30 NO LIMITATION OF LIABILITY

Any resulting contract(s) entered into between the IDR and the successful Collection Agency shall **not** contain any provisions that: (1) limit the liability of the successful Collection Agency (or any approved subcontractor) for breach of contract, breach of warranty, misrepresentation, bad faith, fraud, indemnity, tort, negligence, gross negligence, strict liability, or any other claim or cause of action; (2) limit the liability of the successful Collection Agency (or any approved subcontractor) for any type of damages or loss, including, without limitation, consequential, indirect, incidental, special, and exemplary/punitive damages; (3) limit or cap the aggregate liability of the successful vendor (e.g., a liability cap or ceiling equal to the value of the contract or a multiple thereof); (4) specify sole and/or exclusive remedies applicable to the IDR or the State; or (5) otherwise limit the rights and remedies of the IDR or the State.

## 2.31 FORCE MAJEURE

Neither the Collection Agency nor the IDR shall be liable to the other for any delay or failure of performance of this Contract; and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "Force Majeure".

- A. As used in this Contract, "Force Majeure" includes acts of God, wars, epidemics, civil disturbances or other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Collection Agency shall not be considered a "Force Majeure" unless the subcontractor or supplier is prevented from timely performance by a "Force Majeure" as defined in this Contract. "Force Majeure" does not include: financial difficulties of the Collection Agency or any parent, subsidiary, affiliated or associated company of the Collection Agency; claims or court orders which restrict the Collection Agency's ability to deliver the goods or services contemplated by this Contract; or strikes or labor disputes of the Collection Agency or any subcontractor or agent.
- B. If a "Force Majeure" delays or prevents the Collection Agency's performance, the Collection Agency shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the IDR.

- C. During any such period, the Collection Agency shall continue to be responsible for all costs and expenses related to alternative performance.
- D. This Section shall not be construed as relieving the Collection Agency of its responsibility for any obligation which is being performed by a subcontractor or agent unless the subcontractor or agent is prevented from timely performance by a "Force Majeure" as described here.

## **2.32 CONFIDENTIALITY**

The Collection Agency hereby agrees to the following confidentiality requirements.

- A. The Collection Agency understands that most data provided by the IDR is confidential and subject to state and federal confidentiality laws. All Collection Agency employees, subcontractors, and agents who shall have access to confidential information shall be provided a copy of the IDR's Confidentiality Guidelines and sign a statement that they have received a copy of the Confidentiality Guidelines and agree to comply with the Confidentiality Guidelines prior to having access to data provide by the IDR. The signed statements shall be provided to the Contract Administrator.
- B. The Collection Agency agrees (i) to protect all confidential information provided by the IDR, and not to publish or disclose confidential information to any employee, subcontractor, agent, or third party except as otherwise permitted in this Contract; (ii) to limit disclosure of the Confidential information to its own employees having a need to know the confidential information for the purposes of this Contract; (iii) to use the confidential information solely to carry out its obligations and exercise its rights under this Contract in accordance with the terms of this Contract; (iv) to notify the Contract Administrator promptly of any unauthorized use or disclosure of the confidential information and to cooperate with and assist the IDR in every reasonable way to stop or minimize such unauthorized use or disclosure; and (v) to comply with all applicable federal and state laws and regulations regarding confidentiality of the records to which the Collection Agency is permitted access.
- C. In the event of an attempted, threatened or actual breach of the terms and conditions governing confidential information, the IDR may be entitled to injunctive relief and other measures to reasonably restrain further attempted, threatened or actual breach of the obligation. Such relief or measures shall be in addition to, and not in lieu of, any other rights and remedies available to the IDR.
- E. In the event of a material breach of the confidentiality requirements in this Section, the IDR may suspend this Contract immediately upon notice to the Collection Agency of the breach or may, in IDR's sole discretion, terminate this Contract with the Collection Agency if the default remains uncured within the timeframe specified by the IDR in a notice of breach to the Collection Agency.

- F. The provisions of this Section shall remain in full force and effect and otherwise survive the expiration, cancellation or termination of this Contract or any extension thereof.

### **2.33 UNITED STATES INTERNAL REVENUE SERVICE TAX RETURN ACCESS OBLIGATIONS.**

The U.S. Internal Revenue Service mandates the following provisions be included in this Contract:

- A. In performance of this Contract, the Collection Agency agrees to comply with and assume responsibility for compliance by its employees with the following requirements.
- B. All work shall be done under the supervision of the State or its employees.
- C. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Collection Agency or its authorized subcontractors is prohibited.
- D. All returns and return information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output shall be given the same level of protection as required for the source material.
- E. Collection Agency certified the data processed during the performance of this Contract shall be completely purged from all data storage components of the computer facility used in performance of this Contract, and no output shall be retained by the Collection Agency at the time the work is completed. If immediate purging of all data storage components is not possible, the Collection Agency certifies any IRS data remaining in any storage component shall be safeguarded to prevent unauthorized disclosures.
- F. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data shall be given to the IDR or its designee. When this is not possible, the Collection Agency shall be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and shall provide the IDR with a statement containing the date of destruction, description of material destroyed and the method used.
- G. No work involving information furnished under this Contract shall be subcontracted without the specific approval of the IRS. It shall be the State's responsibility to obtain such approval upon receipt of notice from the Collection Agency of its intended subcontractor(s).

- H. The Collection Agency shall maintain a list of employees authorized access. Such list shall be provided to the State and, upon request, the IRS reviewing office.
- I. The following Civil and Criminal Sanctions may apply. These sanctions are not meant to be exclusive of additional penalties that may be authorized by law.
1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1000 with respect to each instance of unauthorized disclosure. These penalties are prescribed in IRC Section 7213 and 7431 and set forth in 26 CFR 301.6103(n).
  2. Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much \$1000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall notify each such officer or employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus, in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, the costs of the action. These penalties are prescribed by IRC Section 7213A and 7431.
- J. Additionally, it is incumbent upon the Collection Agency to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to the Collection Agency records which contain

Individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or Collection Agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5000.

## **2.34 Compliance with Law**

The Collection Agency shall comply with all applicable federal and state laws and regulations governing the collection of debt. These include, but are not limited to, the Fair Debt Collection Practices Act, the Iowa Debt Collection Practices Act, all guidelines established by the Federal Trade Commission Code of Ethics, and the Rules and Regulations of the American Collector's Association. The Collection Agency shall also follow any other laws or regulations which govern the collection of debt in the nature of child support, alimony, separate maintenance, taxes, judgments, fines, student loans or other debt referred by a State Agency. The Collection Agency shall not threaten a debtor with litigation as a collection tool. If the Collection Agency is pursuing the collection of a debt in a state other than Iowa, the Collection Agency shall also comply with that state's applicable laws and regulations which govern the collection of debt in that state. Notwithstanding any other provision in this Contract to the contrary, failure to comply with any applicable laws and regulations that govern the collection of debt may result in immediate termination of the Contract without notice to the Collection Agency and opportunity to cure. In the event of termination of the Contract for a violation of this subsection, the Collection Agency's performance bond shall be forfeited to the State in addition to any other remedy that State may elect to pursue.

## **2.35 ACCOUNTABLE GOVERNMENT ACT**

The terms of the Accountable Government Act apply to all contract(s) resulting from RFP70500S085. The following performance requirements shall apply specifically to all contracts:

- A. Payment Terms: Applied pursuant to RFP Section 3.8.
- B. Performance Monitoring: Performance is monitored on the daily and monthly transmissions the Collection Agency provides to IDR, indicating the collections made and accounts returned.
- C. Performance Review: Analysis of placements versus the performance shown on the daily and monthly transactions. In addition, refer to RFP Section 1.1.

Additional performance requirements may be negotiated prior to contract signature.

## **2.36 ACCOUNTING SYSTEM AUDIT**

Prior to signing a service contract which exceeds \$150,000, the IDR shall obtain from the Auditor of State a certification stating that the Collection Agency has an accounting system adequate to effect compliance with the terms and conditions of the contract. The Collection Agency may be required to submit to an audit, if necessary, and shall pay for the audit. Ref: Iowa Code Section 11.36. <http://www.legis.state.ia.us/IACODE/2003SUPPLEMENT/11/36.html>

## **2.37 ADMINISTRATIVE AND PERFORMANCE REQUIREMENTS**

A representative of each awarded Collection Agency shall review contract performance, scheduling, information needs and general progress of the contract with the assigned IDR Contract Administrator or his/her designee. This review shall be scheduled quarterly (at a minimum) and may be scheduled more often if deemed necessary by IDR.